



**Farrar (Legal Administrators of the Estate of the Late Edward Farrar) &
5 others v County Government of Mombasa (Environment & Land Case
198 of 2019) [2023] KEELC 20143 (KLR) (26 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20143 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 198 OF 2019
NA MATHEKA, J
SEPTEMBER 26, 2023**

BETWEEN

**MODIE JUDITH FARRAR EDWARD HARRY FARRAR (LEGAL
ADMINISTRATORS OF THE ESTATE OF THE LATE EDWARD
FARRAR) 1ST PLAINTIFF**

**DANIEL M. FARRAR KRAPH FARRAR KAMUZU (LEGAL
ADMINISTRATORS OF THE ESTATE OF THE LATE JOHN
FARRAR) 2ND PLAINTIFF**

**DONALD WILLIAM MBETELA SAMSON KRAPH FARRAR (LEGAL
ADMINISTRATORS OF THE ESTATE OF THE LATE ELIZABETH
FARRAR) 3RD PLAINTIFF**

**JEFFREY MPONDA MITCHELL EDITH FARRAR TEMO (LEGAL
ADMINISTRATORS OF THE ESTATE OF THE LATE LYDIA
FARRAR) 4TH PLAINTIFF**

**LISTER MITCHELL MPONDA JIMMY DICKSON KITAO (LEGAL
ADMINISTRATORS OF THE ESTATE OF THE LATE BEATRICE LETTICE
FARRAR) 5TH PLAINTIFF**

**JANET VILLY MASAI ADNA MWASI KASUMIT (LEGAL ADMINISTRATORS
OF THE ESTATE OF THE LATE NINAH FARRAR) 6TH PLAINTIFF**

AND

COUNTY GOVERNMENT OF MOMBASA DEFENDANT



JUDGMENT

1. At all times material to this suit the plaintiffs were and are the legal representatives of the registered owners of Title No. 162/Section 1 Mainland North, while the defendant is the County Government with administrative and executive over Mombasa County. On or about the July 29, 2019, the County Government of Mombasa through its workmen, servants or agents moved into the subject property to wit, Title No. 162/Section I Mainland North and started cleaning mature trees and damaging temporary structures (vibandas) erected thereon with the intention of constructing a public access road cutting through the subject property. The Defendant has now completed constructing a 9 meters wide road, which is approximately 437 metres long in length and has taken up approximately 0.0817 hectares being part of the said parcel of land. The Plaintiffs contend that they are the legal administrators of the Estates of the deceased persons who were the registered owners of the parcel of Land Plot No. 162/Section 1 Mainland North and that the acts of the County Government complained of are being done without any justification or consent and they engaging in wanton destruction of the suit property. The plaintiffs avers and shall maintain at the hearing of this suit that the defendant's actions amount to trespass upon the plaintiffs' land and their entry without the plaintiffs' consent and/or lawful excuse is illegal, inimical to the plaintiffs' proprietary rights, and detrimental to them; this is more so, considering that the defendants said entry having been unlawful and/or illegal ab initio cannot confer upon them a valid title to the said portion of their land is in breach of their right to land and the plaintiffs pray for vacant possession. The plaintiffs have been deprived of the use, possession and quiet enjoyment of their land and have lost the benefit of being able to develop the suit land with the area taken up the impugned road being approximately 0.0817 hectares with a value of Kshs. 11,500,000.00/=.
2. The plaintiffs pray for Judgment against the defendant jointly and severally for:-
 1. A declaration that the Plaintiffs are the lawful owners and entitled to exclusive and unimpeded right of possession use, occupation and/or quiet enjoyment of their property known as Title No. 162/Section 1 Mainland North;
 2. Special damages of Kshs. 11.500,000/= or in the alternative
 3. General damages for trespass to land;
 4. A permanent Injunction barring the Defendant whether by its officers, workmen agents and servants from trespassing onto, encroaching on, possessing, developing, constructing on, accessing or by any other way howsoever interfering with the Plaintiffs' quiet possession of the said Title No. Title No. 162/Section I Mainland North;
 5. Aggravated damages;
 6. Costs of the suit and interest thereon at court rates.
 7. Any other or further relief that this honourable Court may deem fit to grant.
3. The defendant states that the subject area in dispute is clearly demarcated access road which is not the subject of private proprietorship by the plaintiffs herein. That the area of instance is a government land by virtue of demarcated access road set aside for public utility. That Public right of access is over the Subject area overrides that of that of the plaintiffs herein. The defendant prays that this court be pleased to dismiss the suit herein with costs.



4. This court has considered the evidence and the submissions therein. The plaintiffs vide their amended plaint dated February 16, 2022 averred that they are the administrators of the estates of Edward Farrar, John Farrar, Elizabeth Farrar, Lydia Farrar, Beatrice Lettice Farrar and Ninah Farrar respectively having been granted letters of administration individually. They claimed that on 29th July 2019, the defendant moved into LR 162/ 1/ MN and started clearing out mature trees and temporary structures with the intention of constructing a public road access road which cuts through the suit property. The plaintiffs further averred that the defendant has completed constructing a 9-meter-wide road, taking up approximately 0.0817ha of the suit property. The defendant actions were said to be that of trespass that deprived the Plaintiffs of the use, possession and quiet enjoyment of their land to the tune of Kshs. 11,500,000/=.
5. The defendant filed their defence to the amended plaint on April 11, 2023, they denied trespassing on the suit property and maintained that the area they are accused of trespassing into, is a well demarcated access road for public use. The defendant participated in the Plaintiff's hearing, however when the matter came up for defence hearing on July 10, 2023 the defendant was absent, despite the date being taken by consent. The court proceeded to close the defendant's case and slotted the matter for judgement. In a situation where the defendant does not adduce evidence, the court will still examine the evidence produced by the Plaintiffs to determine whether they have proved their case on a balance of probabilities. In *Joseph Macharia Kairu vs Kenneth Kimani Muiruri* (2021) eKLR, the court held that;

This court has a duty to interrogate and evaluate uncontroverted evidence in order to determine whether the applicant is entitled to the prayers sought. This court has pronounced itself on uncontroverted evidence in Murang'a ELCA No. 16 of 2017:- Gichinga Kibutha v Caroline Nduku [2018] eKLR to the strength that It is not automatic that in instances where the evidence is not controverted, the claimant's claim shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest."

6. What comes out clearly in evidence is that on diverse dates, the Plaintiffs were individually and/ or jointly granted letters of administration to the estates of Edward Farrar, John Farrar, Elizabeth Farrar, Lydia Farrar, Beatrice Lettice Farrar and Ninah Farrar respectively. Further to that, grants were confirmed to the Plaintiffs as administrators of said estates in the following portions; the estate of Edward Farrar a sixth of the suit property, the estate of John Farrar a sixth of the suit property, the estate of Elizabeth Farrar a sixth of the suit property, the estate of Lydia Farrar a sixth of the suit property, the estate of Beatrice Lettice Farrar a sixth of the suit property and the estate of Ninah Farrar also a sixth of the suit property.
7. Only a registered proprietor of a suit property has the rights to institute proceedings against trespass to land. section 24(a) and 25 and 26(1) of the *Land Registration Act* No. 3 of 2012 outlines the interests and rights of a registered proprietor as follows; section 24 of the *Land Registration Act* provides as follows;

the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

Section 25 of the *Land Registration Act* provides as follows;

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as



provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.....

8. The Plaintiffs indicated in their list of documents, which was produced in court by the PW1, that P-EX1 and P-EX2 were a copy of the title and a certificate of search respectively. However, the same were not attached hence they were not produced and admitted into evidence for consideration by the court. The court cannot establish that the plaintiffs or the estates of the persons they represent are indeed the registered proprietors of the suit property. Having found that the plaintiffs have not demonstrated that they are the registered proprietors of the suit property, they cannot claim the rights and privileges vested in law, which no person should interfere with. The plaintiffs are not entitled to protection by the law against the defendant, who they claim have trespassed into the suit property.
9. Without proof of proprietary rights, the plaintiffs cannot sustain a claim for trespass to land. It is trite law that trespass to land is actionable, without proof of any damage once proprietorship is proven, however in this case, none of that has been demonstrated. I find and hold that the Plaintiffs' suit against the defendant has not been proved on a balance of probabilities and I dismiss it with costs.
10. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH DAY OF SEPTEMBER 2023.

N.A. MATHEKA

JUDGE

